

United States District Court

WESTERN DISTRICT OF NEW YORK

THOMAS KENNEDY,

v.

DALE ARTUS,

Superintendent of Clinton Correctional Facility,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 04-CV-680-E(F)

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED, that the petition is DISMISSED pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Because the issues raised are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the Court concludes that petitioner has failed to make a substantial showing of the denial of a constitutional right, and accordingly the Court denies a certificate of appealability.

Any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Petitioner must file any notice of appeal with Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of this judgment. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of the Rule 24 of the Federal Rules of Appellate Procedure.

Date: May 25, 2005

RODNEY C. EARLY, CLERK

By: /S/ Denise Collier
Deputy Clerk

